

Fair Labor Standards Act

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Best known provisions

- ▶ Covered, nonexempt workers are entitled to a minimum wage of \$7.25 per hour effective July 24, 2009.
- ▶ Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Minimum Wage

Overtime

Not just overtime and minimum wage

- ▶ Overtime minimum wage
- ▶ Child Labor
- ▶ Equal Pay

Who is subject to the FLSA?

- Employers who:
 - have an annual dollar volume of sales or business of at least \$500,000
 - engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production

Subject to and Exempt from and not the same

<p>Look to see if the employer is subject to the FLSA \$500,000 and Interstate commerce</p> <p>Employer may be subject to, but not all employees are covered.</p> <p>Important under the Kansas Minimum Wage Law</p>	<p>Employer may be subject to the FLSA, but the employee may be exempt from certain portions</p> <p>Generally overtime provisions</p>
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Subject to

Exemption

The Exemptions

- Executive
- Administrative
- Learned Professional
- Creative Professional
- Computer Employee
- Outside Sales
- Highly Compensated Professional

Executive

- compensated on a salary basis, not less than \$455 per week
- primary duty must be managing the enterprise, or customarily recognized department or subdivision

plus

- customarily and regularly direct the work of at least two or more other full-time employees
- the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

administrative employee

- must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers;

and . . .

- ▶ primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

learned professional

- ▶ must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- ▶ primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;

- ▶ advanced knowledge must be in a field of science or learning; and
- ▶ advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

creative professional

- must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

computer employee

- The employee must be compensated either on a salary or fee basis at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;

below. . .

- 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- 2.) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

more below

- 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

outside sales

- ▶ The employee's primary duty must be making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- ▶ The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly compensated employees

- ▶ performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis)
- ▶ customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee

Child Labor


- Minors 16 and 17 years old may perform any nonhazardous job, for unlimited hours
- Minors 14 and 15 years old may work outside school hours in various nonhazardous jobs under the following conditions

the "following conditions"

- no more than 3 hours on a school day,
- 18 hours in a school week,
- 8 hours on a non-school day, or
- 40 hours in a non-school week.
- may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.

at any age, minors may

- deliver newspapers;
- perform in radio, television, movie, or theatrical productions;
- work for parents in their solely-owned non-farm business (except in mining, manufacturing or on hazardous jobs); or



- › gather evergreens and make evergreen wreaths.

Recordkeeping



No specific form, but must contain

- › personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- › **HELPFUL HINT:** Have your I-9's in order and available

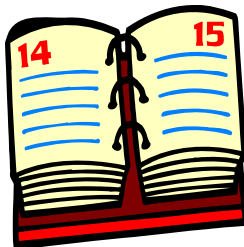
Records must also show:

- hour and day when workweek begins;
- total hours worked each workday and each workweek;
- total daily or weekly straight-time earnings;
- regular hourly pay rate for any week when overtime is worked;

- total overtime pay for the workweek;
- deductions from or additions to wages;
- total wages paid each pay period; and
- date of payment and pay period covered.

Your word against theirs

- Failure to maintain accurate records may very well lead to taking the employees word for it, particularly if they have any kind of record.



Penalties



Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment.

child labor violations



- up to \$11,000 for each employee who was the subject of a violation.
- increased up to \$50,000 for each violation involving death or serious injury
- may be doubled, up to \$100,000, if willful or repeated.

Minimum wage-overtime violations

- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each such violation.
- back wages and an equal amount as liquidated damages.

And then there are those nasty lawsuits



- back pay
- equal amount as liquidated damages,
- plus attorneys fees
- court costs.

Misc.

- If an employee works overtime without permission still gets paid.
- If you let an employee take work home, presumption they worked.
- Comp time is not available to the private sector.

QUESTIONS ?



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Kansas Wage Payment Act

K.S.A. 44-313 et seq.

44-313. Definitions. As used in this act: (a) 'Employer' means any individual, partnership, association, joint stock company, trust, corporation, limited liability company or other organization, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, the state of Kansas or any department, agency or authority of the state, any city, county, school district or other political subdivision, municipality or public corporation and any instrumentality thereof, employing any person. (b) 'Employee' means any person allowed or permitted to work by an employer. (c) 'Wages' means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis less authorized withholding and deductions.

(d) 'Secretary' means the secretary of labor.

History: L. 1973, ch. 204, § 1; L. 1976, ch. 370, § 4; L. 1986, ch. 187, § 1; L. 2003, ch. 76, § 1; L. 2004, ch. 179, § 4; July 1.

ATTORNEY GENERAL'S OPINIONS

Payment of compensation--definitions; wages, unused sick leave. 89-14. Personnel policy giving county employees option to reimburse cash shortages in lieu of disciplinary action is illegal. 94-127.

CASE ANNOTATIONS

1. Action begun under former statute (44-301 et seq.); claim fell within contemplation of section; "its work" construed. *McGowen v. Southwestern Bell Tel. Co.*, 215 K. 887, 529 P.2d 97.
2. Subsection (c) cited; "wages" defined in action for willful non-payment of commissions under 44-

315(b). *Holder v. Kansas Steel Built, Inc.*, 224 K. 406, 412, 582 P.2d 244.

3. Vacation pay due pursuant to employment contract constitutes "wages." *Benjamin v. Manpower, Inc.*, of Wichita, 3 K.A.2d 657, 659, 600 P.2d 148.

4. Sole officer of corporation who knowingly permits violation of wage payment laws is personally liable for unpaid wages and damages. *State ex rel. McCain v. Erdman*, 4 K.A.2d 375, 607 P.2d 78.

5. Phrase "earned time" in employment contract does not constitute "wages" as defined in 44-313(c). *Richardson v. St. Mary Hospital*, 6 K.A.2d 238, 239, 240, 241, 243, 627 P.2d 1143.

6. "Paid days off" under formula in this case properly considered "wages." *Lindstrom v. St. Francis Hosp. & Med. Center, Inc.*, 6 K.A.2d 948, 950, 951, 953, 954, 636 P.2d 231 (1981).

7. Earned wages do not include vacation pay if contractual condition precedent of timely termination notice not performed. *Sweet v. Stormont Vail Regional Medical Center*, 231 K. 604, 605, 606, 607, 647 P.2d 1274 (1982).

8. Absent express statutory authority, administrative agency cannot award compensatory or punitive damages. *Woods v. Midwest Conveyor Co.*, 231 K. 763, 775, 648 P.2d 234 (1982).

9. Where parent labor union sends receiver to operate local union, there is no termination of employee and no wages due. *Micheaux v. Amalgamated Meatcutters & Butcher Workmen*, 231 K. 791, 794, 795, 797, 648 P.2d 722 (1982).

10. Issues of unfair labor practices and questions as to proper wages to be paid are distinct issues; latter is state issue. *Whelan's, Inc. v. Kansas Dept.*

of Human Resources, 235 K. 425, 433, 681 P.2d 621 (1984).

11. Sums withheld from amounts due as bonuses actually wages under particular circumstances. Yuille v. Pester Marketing Co., 9 K.A.2d 464, 467, 682 P.2d 676 (1984).

12. Absent agreement, nothing in Kansas law requires employer to convert vacation time to lump-sum payment. Mid America Aerospace, Inc. v. Department of Human Resources, 10 K.A.2d 144, 146, 147, 694 P.2d 1321 (1985).

13. Claimants not entitled to profit-sharing benefits unless employed on distribution date of employment contract. Morton Bldgs., Inc. v. Department of Human Resources, 10 K.A.2d 197, 198, 202, 695 P.2d 450 (1985).

14. Cited in showing protection of wage earners as principal objective of many laws. Burris v. Northern Assurance Co. of America, 236 K. 326, 333, 691 P.2d 10 (1984).

15. Combination of factors herein permissible in arriving at actual wages so long as no statute or agreement violated. Dangerfield v. Montgomery Ward Co., 236 K. 594, 599, 694 P.2d 439 (1985).

16. Hearing officer of DHR has jurisdiction on violations of KWPA; statutes enforceable where no conflict with federal law. Elkins v. Showcase, Inc., 237 K. 720, 728, 704 P.2d 977 (1985).

17. Benefits under stock option and savings fund plans subject to conditions precedent are not wages. Weir v. Anaconda Co., 773 F.2d 1073, 1083, 1084 (1985).

18. Cited; prohibitions against deductions from employee's wages except as permitted by statute examined. Excel Corp. v. Kansas Dept. of Human Resources, 12 K.A.2d 417, 747 P.2d 179 (1987).

19. Claim for back wages may be initiated with either secretary of human resources or district court. Spor v. Presta Oil Co., 14 K.A.2d 696, 697, 798 P.2d 68 (1990).

20. Commission rights of employee selling telecommunication services vested at time of sale even if employee terminated before payable. Smith v. MCI Telecommunications Corp., 755 F.Supp. 354, 359 (1990).

21. Whether grain salesperson was employee or independent contractor under right to control test

for KWPA (44-301 et seq.) purposes examined. Herr v. McCormick Grain-The Heiman Company, Inc., 841 F.Supp. 1500, 1513 (1993).

22. Whether employee's severance pay claim was preempted by ERISA (29 U.S.C. §1001 et seq.) examined. Kincaid v. Harcourt Brace Jovanovich, 863 F.Supp. 1471, 1477 (1994).

23. Issue concerning whether merchandiser was employee for wage, retirement and labor standard purposes precluded summary judgment. Herr v. Heiman, 75 F.3d 1509, 1512 (1996).

24. Former police officer's claims for pension amount were less than jurisdictional amount required under diversity statute. Fitzgerald v. City of Ottawa, Kan., 975 F.Supp. 1402, 1406 (1997).

25. Material fact issue concerning whether employer owed employees wages for soliciting business for employer precluded summary judgment. Kephart v. Data Systems Intern, Inc., 243 F.Supp.2d 1205, 1231 (2003).

26. Oral agreement to withhold, deduct or divert any portion of employee's wages is illegal; 100% penalty plus interest approved. Beckman v. Kansas Dept. of Human Resources, 30 K.A.2d 606, 43 P.3d 891 (2002).

27. Fact issue concerning whether employer owed employees wages relating to work precluded summary judgment. Kephart v. Data Systems Intern., Inc., 243 F.Supp.2d 1205, 1208 (2003).

44-314. Pay periods; payment methods. (a) Every employer shall pay all wages due to the employees of the employer at least once during each calendar month, on regular paydays designated in advance by the employer.

(b) The employer may designate the method by which employees receive wages, provided all wages shall be paid by one or more of the following methods:

(1) In lawful money of the United States;

(2) by check or draft which is negotiable in the community wherein the place of employment is located;

(3) by electronic fund transfer or deposit to an automated clearinghouse member financial institution account designated by the employee; or

(4) by payroll card.

(c) Any employer that elects to pay wages only by a method authorized in subsection (b)(3) shall offer an alternative payment method as a default option for employees that fail to designate a financial institution account for electronic fund transfer or deposit.

(d) Any employer that elects to pay wages using a payroll card as authorized in subsection (b)(4) shall allow employees at least one means of fund access withdrawal per pay period at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement.

(e) Not less than 30 days prior to implementing a payroll program using only the methods authorized in subsection (b)(3) or (b)(4), an employer shall either:

(1) Conduct one or more employee forums to educate employees regarding the use of a direct deposit or payroll card program offered by the employer; or
(2) distribute educational information to employees about direct deposits or payroll cards as they may be used under the payroll card program offered by the employer.

(f) (1) Employers shall retain no interest in wages paid by electronic funds transferred to an employee's payroll card account, other than the right to correct inadvertent overpayments in accordance with the rules governing direct deposit.

(2) An employer may not charge an employee initiation, loading or other participation fees to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen or damaged payroll card.

(g) As used in this section:

(1) 'Payroll card' means a card, issued to an employee by an employer, a bank or other entity on behalf of an employer, onto which an employee's net wages are loaded on regular paydays from a payroll card account and made accessible to an employee. A payroll card is a machine readable instrument for purposes of K.S.A. 9-1111d, and amendments thereto.

(2) 'Payroll card issuer' means an employer, a bank or other entity that issues a payroll card to an employee under an employer payroll card program.

(3) 'Payroll card account' means an account into

which an employer deposits each participating employee's net wages on regular paydays through an electronic fund transfer.

(h) The end of the pay period for which payment is made on a regular payday shall be not more than 15 days before such regular payday unless a variance in such requirement is authorized by state or federal law.

History: L. 1973, ch. 204, § 2; L. 1976, ch. 370, § 5; L. 1996, ch. 143, § 2; L. 1999, ch. 69, § 2; L. 2007, ch. 132, § 1; July 1.

SOURCE OR PRIOR LAWS

44-301.

RESEARCH AND PRACTICE AIDS

Labor Relations 1322.

C.J.S. Labor Relations § 1176.

LAW REVIEW AND BAR JOURNAL REFERENCES:

'See Dick and Jane Work: A Kansas Wage Payment Act Primer,' Boyd A. Byers and Carolyn L. Rumfelt, 72 J.K.B.A. No. 9, 14 (2003).

CASE ANNOTATIONS

1. In action for non-payment of commissions under 44-315(b), this section construed as not restricting definition of wages under 44-313. *Holder v. Kansas Steel Built, Inc.*, 224 K. 406, 412, 582 P.2d 244.

2. When employee receives all wages due and deficit commissions voided once a month, statute met regardless of computation period. *Dangerfield v. Montgomery Ward Co.*, 236 K. 594, 601, 694 P.2d 439 (1985).

3. Back and unpaid wages; tip pooling system and effect of federal law discussed in detail. *Elkins v. Showcase, Inc.*, 237 K. 720, 724, 704 P.2d 977 (1985).

4. Oral agreement to withhold, deduct or divert any portion of employee's wages is illegal; 100% penalty plus interest approved. *Beckman v. Kansas Dept. of Human Resources*, 30 K.A.2d 606, 43 P.3d 891 (2002).

44-315. Separation prior to payday; damages for willful non-payment.

(a) Whenever an employer discharges an employee or whenever an employee quits or resigns, the employer shall pay the employee's earned wages not later than the next regular payday upon which

he or she would have been paid if still employed as provided under K.S.A. 44-314 either through the regular pay channels or by mail postmarked within the deadlines herein specified if requested by the employee.

(b) If an employer willfully fails to pay an employee wages as required by K.S.A. 44-314, and amendments thereto, or as required under subsection (a) of this section, such employer shall be liable to the employee for the wages due and also shall be liable to the employee for a penalty in the fixed amount of 1% of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the eighth day after the day upon which payment is required or in an amount equal to 100% of the unpaid wages, whichever is less. For the purpose of such additional damages, the failure to pay shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon such petition nor shall it be deemed to continue after an appeal is filed under K.S.A. 44-322a, and amendments thereto, until the decision on appeal becomes final.

History: L. 1973, ch. 204, § 3; L. 1977, ch. 173, § 1; L. 1999, ch. 69, § 1; July 1.

SOURCE OR PRIOR LAWS

44-307, 44-308.

RESEARCH AND PRACTICE AIDS

Labor Relations 1324.

C.J.S. Labor Relations §§ 1177, 1178.

CASE ANNOTATIONS

1. Maximum penalty hereunder assessed; section not applied retrospectively; punitive damages not recoverable. *Holder v. Kansas Steel Built, Inc.*, 224 K. 406, 582 P.2d 244.
2. Cited in action to obtain satisfaction of previous judgment. *Wells v. Davis*, 226 K. 586, 587, 603 P.2d 180.
3. Willful refusal to pay vacation wages upon demand, in lieu of time off pursuant to contract, subjects employer to penalty hereunder. *Benjamin v. Manpower, Inc., of Wichita*, 3 K.A.2d 657, 658, 660, 661, 600 P.2d 148.
4. Sole officer of corporation who knowingly permits violation of wage payment laws is personally liable for unpaid wages and damages. *State ex rel. McCain*

v. Erdman, 4 K.A.2d 375, 376, 377, 607 P.2d 78.

5. Phrase "earned time" in employment contract does not constitute "wages" as defined in 44-313(c). *Richardson v. St. Mary Hospital*, 6 K.A.2d 238, 240, 627 P.2d 1143.

6. Employer cannot circumvent statute by including condition subsequent forfeiture clause in employment contract. *Lindstrom v. St. Francis Hosp. & Med. Center, Inc.*, 6 K.A.2d 948, 951, 636 P.2d 231 (1981).

7. Earned wages do not include vacation pay if contractual condition precedent of timely termination notice not performed. *Sweet v. Stormont Vail Regional Medical Center*, 231 K. 604, 606, 607, 612, 647 P.2d 1274 (1982).

8. Absent express statutory authority, administrative agency cannot award compensatory or punitive damages. *Woods v. Midwest Conveyor Co.*, 231 K. 763, 775, 648 P.2d 234 (1982).

9. In absence of willful violation, no penalty where employer fails to pay disputed wages. *Weinzirl v. The Wells Group, Inc.*, 234 K. 1016, 1021, 1023, 677 P.2d 1004 (1984).

10. Sums withheld from amounts due as bonuses actually wages under particular circumstances. *Yuille v. Pester Marketing Co.*, 9 K.A.2d 464, 466, 682 P.2d 676 (1984).

11. Firing of claimant not itself enough to entitle claimant to statutory penalties. *Mid America Aerospace, Inc. v. Department of Human Resources*, 10 K.A.2d 144, 148, 694 P.2d 1321 (1985).

12. Claimants not entitled to profit-sharing benefits unless employed on distribution date of employment contract. *Morton Bldgs., Inc. v. Department of Human Resources*, 10 K.A.2d 197, 198, 202, 695 P.2d 450 (1985).

13. Combination of commission/hourly wage plan consistent with employment agreement between parties not violative of statute. *Dangerfield v. Montgomery Ward Co.*, 236 K. 594, 597, 694 P.2d 439 (1985).

14. Back and unpaid wages; tip pooling system and effect of federal law discussed in detail. *Elkins v. Showcase, Inc.*, 237 K. 720, 721, 704 P.2d 977 (1985).

15. Cited; benefits under stock option and savings fund plans subject to conditions precedent are not

wages. *Weir v. Anaconda Co.*, 773 F.2d 1073, 1084 (1985).

16. Mere inclusion of unenforceable provision in contract does not evince fraud. *Smith v. MCI Telecommunications Corp.*, 678 F.Supp. 823, 831 (1987).

17. Once an employee's right to earn wages becomes absolute, a condition subsequent cannot impose a forfeiture. *Smith v. MCI Telecommunications Corp.*, 755 F.Supp. 354, 358 (1990).

18. Whether respondent violated KWPA (44-301 et seq.) by failing to pay salesperson commissions earned during employment examined. *Herr v. McCormick Grain-The Heiman Company, Inc.*, 841 F.Supp. 1500, 1514 (1993).

19. "Employer" determined; effect of employer's filing for bankruptcy. *Alkire v. Fissel*, 23 K.A.2d 487, 495, 932 P.2d 1034 (1997).

20. Former police officer's claims for pension amount were less than jurisdictional amount required under diversity statute. *Fitzgerald v. City of Ottawa, Kan.*, 975 F.Supp. 1402, 1405 (1997).

21. Issue concerning whether employer's refusal to pay overtime was willful precluded summary judgment. *Clements v. Emery Worldwide Airlines, Inc.*, 44 F.Supp.2d 1141, 1148 (1999).

22. Accrued vacation was earned wages which employer is required to pay to terminated employee. *Dillard Dept. Stores, Inc. v. Kansas Dept. of Human Resources*, 28 K.A.2d 229, 13 P.3d 358 (2000).

23. Material fact issue concerning whether plaintiffs were eligible for bonus program precluded summary judgment. *Kephart v. Data Systems Intern, Inc.*, 243 F.Supp.2d 1205, 1226, 1231 (2003).

24. Oral agreement to withhold, deduct or divert any portion of employee's wages is illegal; 100% penalty plus interest approved. *Beckman v. Kansas Dept. of Human Resources*, 30 K.A.2d 606, 43 P.3d 891 (2002).

25. Fact issue concerning whether employer owed employees wages relating to work precluded summary judgment. *Kephart v. Data Systems Intern, Inc.*, 243 F.Supp.2d 1205, 1208 (2003).

44-316. Payment of undisputed wages; remedies retained. (a) In case of a dispute over the amount of wages due, the employer shall pay, without

conditions and no later than the regular payday next following the concession, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to, including those provided under this act, as to any balance claimed.

(b) Unless payment is made by binding settlement agreement, the acceptance by an employee of a payment under this section shall not constitute a release as to the balance of his claim and any release required by an employer as a condition to payment shall be in violation of this act and shall be null and void.

History: L. 1973, ch. 204, § 4; July 1.

CASE ANNOTATIONS

1. Section construed; employer must willfully withhold wages; employee has remedy only as to balance claimed; release on back of check violated subsection (b). *Holder v. Kansas Steel Built, Inc.*, 224 K. 406, 411, 582 P.2d 244.

44-317. Liability under subcontracts. Whenever any person responsible pursuant to a contract for the performance of any work has subcontracted the performance of all or any part of such work, such responsible person shall be civilly liable to the employees of the subcontractor for wages due on account of the performance of work covered by the contract, but only if and to the extent that the subcontractor fails to pay such wages. This section shall not be construed to impose any liability on any person other than the subcontractor for the added fixed damages provided in subsection (d) [(b)] of K.S.A. 44-315. Any payment of wages by reason of liability imposed by this section shall result in the creation of a right in the payor to recoupment from the subcontractor or any other person jointly or severally liable to the subcontractor therefor.

History: L. 1973, ch. 204, § 5; July 1.

SOURCE OR PRIOR LAWS

44-306.

RESEARCH AND PRACTICE AIDS

Labor Relations 1321.

C.J.S. Labor Relations § 1175.

CASE ANNOTATIONS

1. Construed and applied; action to recover wages and penalties under former statute; claim within

contemplation of act. *McGowen v. Southwestern Bell Tel. Co.*, 215 K. 887, 888, 891, 529 P.2d 97. K. S. A. § 44-317, KS ST § 44-317

44-318. Deceased employees. In the absence of actual notice of probate proceedings, the employer may pay, upon proper demand, wages due a deceased employee. Any such payment or payments shall be in the following order of preference: Spouse, children eighteen (18) years of age and over in equal shares, father, mother, sisters and brothers in equal shares, or the person to whom funeral expenses are due.

History: L. 1973, ch. 204, § 6; July 1.

44-319. Withholding of wages.

(a) No employer may withhold, deduct or divert any portion of an employee's wages unless: (1) The employer is required or empowered to do so by state or federal law; (2) the deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employer's books; or (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee.

(b) Nothing in this section shall be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by him to charitable organizations; nor shall this section prohibit deductions by check-off of dues to labor organizations or service fees, where such is not otherwise prohibited by law.

History: L. 1973, ch. 204, § 7; July 1.

RESEARCH AND PRACTICE AIDS

Labor Relations 1321.

C.J.S. Labor Relations § 1175.

ATTORNEY GENERAL'S OPINIONS

2004 Pocket Part ATTORNEY GENERAL'S OPINIONS

County commissioners do not have authority to hire, fire, demote or promote individuals in the sheriff's office. 2003-15.

CASE ANNOTATIONS

1. Action based on oral contract of employment subject to three-year statute of limitations. *Head v. Knopp*, 225 K. 45, 46, 587 P.2d 867.

2. Subsection (a)(3) cited; breach of employment

contract when wages withheld without signed authorization. *Temmen v. Kent-Brown Chev. Co.*, 227 K. 45, 46, 48, 49, 50, 51, 605 P.2d 95.

3. Employer prohibited from withholding employee's wages as liquidated damages; employee may not waive right nor can contract contravene law. *Weinzirl v. The Wells Group, Inc.*, 234 K. 1016, 1019, 677 P.2d 1004 (1984).

4. Sums withheld from amounts due as bonuses actually wages under particular circumstances. *Yuille v. Pester Marketing Co.*, 9 K.A.2d 464, 467, 682 P.2d 676 (1984).

5. Combination of commission/hourly wage plan consistent with employment agreement between parties not violative of statute. *Dangerfield v. Montgomery Ward Co.*, 236 K. 594, 597, 694 P.2d 439 (1985).

6. Back and unpaid wages; tip pooling system and effect of federal law discussed in detail. *Elkins v. Showcase, Inc.*, 237 K. 720, 724, 704 P.2d 977 (1985).

7. Employer cannot deduct from employee's wages loss to employer from burglaries, robberies or alleged negligent act. *Excel Corp. v. Kansas Dept. of Human Resources*, 12 K.A.2d 417, 747 P.2d 179 (1987).

8. Whether employee authorized deductions from commissions examined in federal ERISA action. *Herr v. McCormick Grain-The Heiman Company, Inc.*, 841 F.Supp. 1500, 1515 (1993).

9. No violation when employer gave at-will employee notice of pay cut before wages were earned. *Salon Enterprises, Inc. v. Langford*, 29 K.A.2d 268, 31 P.3d 290 (2000).

44-319a. Automatic enrollment in an employee retirement plan; requirements. (a) Any employer which provides automatic enrollment in an employee retirement plan described in sections 401(k) or 403(b) of the internal revenue code, or a governmental deferred compensation plan described in section 457 of the internal revenue code, or a payroll deduction IRA plan described in section 408 or 408A of the internal revenue code, shall be relieved of liability for the actual decisions made by the employer on behalf of any participating employee as to the default investment

of contributions made for that employee to the plan or program provided that:

(1) The plan allows the participating employee at least quarterly opportunities to select investments for the employee's contributions between investment alternatives available under the plan;

(2) the employee is given notice of the investment decisions that will be made in the absence of participant direction, a description of all the investment alternatives available for employee investment direction under the plan and a brief description of procedures available for the employee to change investments; and

(3) the employee is given at least annual notice of the actual default investments made of contributions attributable to the employee.

(b) As used in this section, 'automatic enrollment' means a plan provision under which the employee will have a specified contribution made to the plan equal to a compensation reduction that will be made for the employee unless the employee affirmatively elects no compensation reduction contributions or a compensation reduction contribution in another amount. The relief from liability of the employer under this section shall extend to any other plan official which actually makes the default investment decisions on behalf of participating employees.

(c) Nothing in this section shall modify any existing responsibility of employers or other plan officials for the selection of investment funds for participating employees.

History: L. 2006, ch. 68, § 1; July 1.

44-320. Notification to employees.

Each employer shall: (a) Upon the request of the employee, notify such employee in writing or as required by a collective bargaining agreement, of the rate of pay and of the day and place of payment.

(b) Upon the request of the employee, notify such employee in writing or through a posted notice maintained in a place accessible to his employees or as required by a collective bargaining agreement, of any changes in the arrangements specified in subsection (a) of this section prior to the time of such changes.

(c) Upon the request of the employee, make available to such employee in writing or through a

posted notice maintained in a place accessible to his employees or as required by a collective bargaining agreement, employment practices and policies with regard to vacation pay, sick leave and any other benefits to which the employee is entitled and which have a direct bearing upon wages payable.

(d) Furnish each employee, upon request by such employee, with an itemized statement of deductions made from his wages under K.S.A. 44-319 for each pay period such deductions are made.

History: L. 1973, ch. 204, § 8; July 1.

44-321. Waivers prohibited. Except as provided in K.S.A. 44-324, no provision of, or any right created under this act may in any way be contravened, set aside or waived.

History: L. 1973, ch. 204, § 9; July 1.

SOURCE OR PRIOR LAWS

1993 Main Volume SOURCE OR PRIOR LAWS 44-305.

CASE ANNOTATIONS

1. Phrase "earned time" in employment contract does not constitute "wages" as defined in 44-313(c). *Richardson v. St. Mary Hospital*, 6 K.A.2d 238, 240, 241, 627 P.2d 1143.

2. Employee may not waive right nor can contract contravene law. *Weinzirl v. The Wells Group, Inc.*, 234 K. 1016, 1019, 677 P.2d 1004 (1984).

3. Combination of commission/hourly wage plan consistent with employment agreement between parties not violative of statute. *Dangerfield v. Montgomery Ward Co.*, 236 K. 594, 597, 694 P.2d 439 (1985).

44-322. Enforcement; hearings; powers of secretary; contempt.

(a) The secretary shall enforce and administer the provisions of this act and the secretary or authorized representatives of the secretary are empowered to hold hearings and otherwise to investigate violations or alleged violations of this act.

(b) The secretary or authorized representatives of the secretary are empowered to enter such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of this act or any rule or regulation issued

hereunder or which may aid in the enforcement of the provisions of this act.

(c) The secretary or authorized representatives of the secretary shall have the power to administer oaths and examine witnesses under oath or otherwise, issue compulsory process to compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents and testimony relating to claims for unpaid wages, and to take depositions and affidavits in the administration of this act.

(d) In case of failure of any person to comply with any compulsory process lawfully issued, the secretary may apply to the judge of the district court for citation in contempt and such judge may punish for contempt, as in other cases of refusal to obey the orders and processes of the court.

History: L. 1973, ch. 204, § 10; L. 1976, ch. 370, § 6; July 1.

RESEARCH AND PRACTICE AIDS

1993 Main Volume RESEARCH AND PRACTICE AIDS

Labor Relations 1423.

C.J.S. Labor Relations § 1212.

CASE ANNOTATIONS

1. Reviewing court has power to determine whether secretary has jurisdiction even if issue not raised at hearing. *Micheaux v. Amalgamated Meatcutters & Butcher Workmen*, 231 K. 791, 795, 648 P.2d 722 (1982).

2. Sums withheld from amounts due as bonuses actually wages under particular circumstances. *Yuille v. Pester Marketing Co.*, 9 K.A.2d 464, 467, 682 P.2d 676 (1984).

3. Claim for back wages may be initiated with either secretary of human resources or district court. *Spor v. Presta Oil Co.*, 14 K.A.2d 696, 697, 798 P.2d 68 (1990).

4. Cited; whether KDHR letter stating individual was employee for KWPA (44-301 et seq.) purposes was official opinion examined. *Herr v. McCormick Grain-The Heiman Company, Inc.*, 841 F.Supp. 1500, 1514 (1993).

44-322a. Enforcement; hearing; action of secretary; judicial review. [See Revisor's Note] (a) Whenever a claim for unpaid wages under K.S.A.

44-313 through 44-326, and amendments thereto, is filed with the secretary of labor, the secretary or the secretary's authorized representative shall investigate the claim as provided in K.S.A. 44-322, and amendments thereto, to determine if a dispute exists between the parties to the claim. If the secretary or the secretary's authorized representative determines that a dispute does exist and that the parties are unable to resolve their differences, the secretary or the secretary's authorized representative shall establish a time and place for a hearing on the matter. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Upon the completion of the hearing, the presiding officer shall determine whether the claim for unpaid wages is a valid claim under K.S.A. 44-313 through 44-326 and amendments thereto. If the presiding officer determines the claim for unpaid wages is valid, the amount of unpaid wages owed together with any damages which may be assessed under K.S.A. 44-315, and amendments thereto, if applicable, also shall be determined by the presiding officer. If the presiding officer determines the claim for unpaid wages is valid, the presiding officer shall order that the unpaid wages and any applicable damages be paid by the party responsible for their payment. Any initial order under this section shall be reviewed by the secretary or the secretary's authorized representative in accordance with K.S.A. 77-527 and amendments thereto. The decision of the secretary or the secretary's authorized representative shall be final and the amount of any unpaid wages and applicable damages determined by the secretary or the secretary's authorized representative to be valid shall be due and payable unless judicial review is sought within the time allowed by law.

(c) Any agency action under this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1977, ch. 173, § 2; L. 1983, ch. 165, § 1; L. 1986, ch. 318, § 53; L. 1988, ch. 356, § 138; L. 2004, ch. 179, § 5; July 1.

REVISOR'S NOTES

2004 Pocket Part REVISOR'S NOTES

CAUTION: Section was also amended effective July 1, 2008, see L. 2004, ch. 145, § 14.

CASE ANNOTATIONS

1. Phrase "earned time" in employment contract does not constitute "wages" as defined in 44-313(c). *Richardson v. St. Mary Hospital*, 6 K.A.2d 238, 243, 627 P.2d 1143.
2. Secretary of Human Resources has no authority hereunder to investigate and adjudicate prevailing wage claims under 44-201. *R. D. Andersen Constr. Co. v. Kansas Dept. of Human Resources*, 7 K.A.2d 453, 454, 455, 457, 458, 459, 643 P.2d 1142 (1982).
3. Absent express statutory authority, administrative agency cannot award compensatory or punitive damages. *Woods v. Midwest Conveyor Co.*, 231 K. 763, 775, 648 P.2d 234 (1982).
4. Reviewing court has power to determine whether secretary has jurisdiction even if issue not raised at hearing. *Micheaux v. Amalgamated Meatcutters & Butcher Workmen*, 231 K. 791, 793, 795, 648 P.2d 722 (1982).
5. Review upon record under subsection (e) is not de novo review of evidence. *Weinzirl v. The Wells Group, Inc.*, 234 K. 1016, 1018, 677 P.2d 1004 (1984).
6. Cited; whether KDHR letter stating individual was employee for KWPA (44-301 et seq.) purposes was official opinion examined. *Herr v. McCormick Grain-The Heiman Company, Inc.*, 841 F.Supp. 1500, 1514 (1993).

44-323. Assessment of interest; who deemed employer. (a) At the discretion of the presiding officer, interest, as provided under K.S.A. 16-201, and amendments thereto, may be assessed on wage claims found to be due and owing from the date the wages were due as defined in K.S.A. 44-314, and amendments thereto.

(b) Any officer, manager, major shareholder or other person who has charge of the affairs of an employer, and who knowingly permits the employer to engage in violations of K.S.A. 44-314 or 44-315, and amendments thereto, may be deemed the employer for purposes of this act.

History: L. 1973, ch. 204, § 11; L. 1983, ch. 165, § 2; L. 1988, ch. 356, § 139; L. 2003, ch. 76, § 2; July 1.

CASE ANNOTATIONS

1. Action based on oral contract of employment subject to three-year statute of limitations. *Head v. Knopp*, 225 K. 45, 46, 587 P.2d 867.
2. Cited; statutory remedy for damages for breach of employment contract lies hereunder. *Temmen v. Kent-Brown Chev. Co.*, 227 K. 45, 46, 48, 49, 50, 51, 605 P.2d 95.
3. Sole officer of corporation who knowingly permits violation of wage payment laws is personally liable for unpaid wages and damages. *State ex rel. McCain v. Erdman*, 4 K.A.2d 375, 377, 607 P.2d 78.
4. Where employee elects statutory remedy for willful nonpayment of wages, interest under 16-201 not mandatory. *Weinzirl v. The Wells Group, Inc.*, 234 K. 1016, 1023, 677 P.2d 1004 (1984).
5. "Employer" determined; effect of employer's filing for bankruptcy. *Alkire v. Fissel*, 23 K.A.2d 487, 495, 932 P.2d 1034 (1997).

44-324. Proceedings; assignment of claims taken by secretary, when; fee; wage claims assignment fee fund.

(a) Any proceeding by one or more employees to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction.

(b) Whenever the secretary determines under K.S.A. 44-322a, and amendments thereto, that an employee has a valid claim for unpaid wages and determines that the amount of the claim is less than \$10,000, the secretary, upon the written request of the employee, shall take an assignment of the claim in trust for such employee and shall take action appropriate to enforce or defend such claim. Whenever the secretary determines under K.S.A. 44-322a, and amendments thereto, that an employee has a valid claim for unpaid wages and determines that the amount of the claim is equal to or greater than \$10,000, the secretary, upon the written request of the employee, may take an assignment of the claim in trust for such employee and if the assessment is taken, shall take action appropriate to enforce or defend such claim. With the written consent of the assignor, the secretary may settle or adjust any claim assigned pursuant to this subsection. Whenever the

secretary takes an assignment of a claim in trust for an employee under this section, the secretary shall charge and collect a fee therefor which fee shall be fixed by rules and regulations adopted by the secretary. The fee fixed by rules and regulations shall be in an amount of not more than \$25 per claim assigned under this section.

(c) If the secretary prevails on behalf of the employee, the court shall award a judgment to the agency in an amount equal to the cost of reasonable attorney fees for such action.

(d) There is hereby created the wage claims assignment fee fund. The secretary shall remit all moneys received for assignment and attorney fees charged and collected under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the wage claims assignment fee fund. All expenditures from the wage claims assignment fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

History: L. 1973, ch. 204, § 12; L. 1976, ch. 370, § 7; L. 1977, ch. 173, § 4; L. 1986, ch. 187, § 2; L. 1996, ch. 162, § 1; L. 2001, ch. 5, § 134; July 1.

CASE ANNOTATIONS

1. Sole officer of corporation who knowingly permits violation of wage payment laws is personally liable for unpaid wages and damages. *State ex rel. McCain v. Erdman*, 4 K.A.2d 375, 377, 607 P.2d 78.

2. Phrase "earned time" in employment contract does not constitute "wages" as defined in 44-313(c); Secretary of Human Resources real party in interest. *Richardson v. St. Mary Hospital*, 6 K.A.2d 238, 627 P.2d 1143.

3. Mentioned in reviewing claim assigned to secretary hereunder. *Sweet v. Stormont Vail Regional Medical Center*, 231 K. 604, 605, 647 P.2d 1274 (1982).

4. Where parent labor union sends receiver to operate

local union, there is no termination of employee and no wages due. *Micheaux v. Amalgamated Meatcutters & Butcher Workmen*, 231 K. 791, 792, 793, 648 P.2d 722 (1982).

5. Claimants not entitled to profit-sharing benefits unless employed on distribution date of employment contract. *Morton Bldgs., Inc. v. Department of Human Resources*, 10 K.A.2d 197, 198, 202, 695 P.2d 450 (1985).

6. Claim for back wages may be initiated with either secretary of human resources or district court. *Spor v. Presta Oil Co.*, 14 K.A.2d 696, 697, 798 P.2d 68 (1990).

7. Plaintiff not entitled to attorney fees; bonus defined as wages. *Shelley v. Kansas Dept. of Human Resources*, 27 K.A.2d 715, 8 P.3d 33 (2000).

44-325. Rules and regulations. The secretary may adopt such rules and regulations as necessary for the purposes of administering and enforcing the provisions of this act.

History: L. 1973, ch. 204, § 13; L. 1976, ch. 370, § 8; July 1.

CASE ANNOTATIONS

1. K.A.R. 49-20-1F is valid regulation under provisions of this statute. *Lindstrom v. St. Francis Hosp. & Med. Center, Inc.*, 6 K.A.2d 948, 950, 951, 636 P.2d 231 (1981).

44-326. Severability. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances shall not be affected thereby.

History: L. 1973, ch. 204, § 14; July 1.

44-327. Agreements with other states to collect wages and perform reciprocal services. The secretary of labor may enter into agreements with other states to collect wages from out-of-state employers and to perform reciprocal services for such other states in the state of Kansas.

History: L. 1977, ch. 173, § 3; L. 2004, ch. 179, § 6; July 1.



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Wage Payments and Procedures for Enforcement

K.A.R. 49-20-1 through 49-21-4

49-20-1 Definitions. (a) Authorized deductions, "accruing to the benefit of the employee", as used in K.S.A. 44-319(a)(3), shall mean deductions from an employee's pay for which the employer has received a signed authorization from the employee for lawful deductions that do not in any way waive, set aside or contravene any rights created in K.S.A. 44-313 et seq., as amended.

(1) Authorized deductions shall include:

(A) contributions to and recovery of overpayments under employee welfare and pension plans;

(B) contributions made under a collective bargaining agreement to employee welfare and pension plans that are not subject to the federal welfare and pension plans disclosure act. Such plans include, but are not limited to, group insurance plans, hospitalization insurance, life insurance plans approved by the Kansas commissioner of insurance, group hospitalization and medical service programs offered by nonprofit hospitalization and medical service organizations, and group medical insurance plans;

(C) deductions authorized in writing by employees or deduction by employers under a collective bargaining agreement for payments into:

(i) company-operated thrift plans; or

(ii) stock option or stock purchase plans to buy securities of the employing or an affiliated corporation at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter;

(D) deductions by employers for payment into employee personal savings accounts. Such payments include, but are not limited to, payments into credit unions, savings fund societies, savings and loan associations, building and loan associations, savings departments of banks for Christmas, vacations or other purposes, and payments for United States government bonds;

(E) contributions by the employee for charitable purposes;

(F) contributions to labor organizations for purposes of dues, assessments, initiation fees and other charges; and

(G) the actual cost to the employer of meals and lodging obtained from the employer, if the cost is not wages earned.

(2) The following deductions shall not be considered authorized deductions "accruing to the benefit of the employee" within the meaning of K.S.A. 44-319(a)(3):

(A) deductions made for cash and inventory shortages; breakage; returned checks or bad credit card sales; losses to employers resulting from burglaries, robberies, or

alleged negligent acts.

(B) deductions made for uniforms, special tools or special equipment which are not necessary to the performance of the assigned duties and are customarily supplied by the employer;

(C) any other deduction not set out by K.S.A. 44-313 et seq. or permitted by these rules and regulations.

(3) The following deductions shall not require written authorization by the employee as provided by K.S.A. 44-319(a)(3):

(A) Deductions which the employer is required or empowered to make:

(i) By state or federal law; or

(ii) by court order lawfully issued, to the extent permitted by that law (K.S.A. 44-319(a)(1));

(B) deductions for medical, surgical, or hospital care and services paid for by the employer which are without any financial benefit to the employer and which are duly recorded in accounts maintained by the employer (K.S.A. 44-319(a)(2));

(C) deductions made to correct wage overpayments resulting from employer error when the error alone has resulted in the overpayment. However, if the deduction rate is to exceed the overpayment rate, the employer shall be required to obtain signed authorization of the employee before making any such deduction;

(D) deduction for cash advances made upon the written request or by signed agreement of the employee and made as part payment of future wages to be earned;

(E) deduction for excess cash expense allowances or advances made to the employee which are not justified by expense receipts returned to the employer, to the extent of any unexpended cash expense advances not returned to the employer.

(b) "Plan of payment," as used in K.S.A. 44-

314, shall mean a method agreed to in advance by an employee in which the employer makes bank deposits for the employee on or before the regular payday in an amount equal to the payroll amount, plus any additional amount required by the depository as a service charge, upon which the employee may draw an amount equivalent to the employee's wages less authorized deductions. Under such a plan of payment, the employer shall give a statement of earnings to the employee and the bank shall provide one free check to the employee.

(c) "Binding settlement agreement," as contemplated by K.S.A. 44-316(b), shall mean an agreement approved by the secretary of human resources or the secretary's authorized representative either prior to or subsequent to an administrative hearing conducted pursuant to K.S.A. 44-322a. Once an appeal from an administrative order has been filed with the district court pursuant to K.S.A. 60-2101, and prior to court decision, any binding settlement agreement between the parties, as defined herein shall be valid only if approved by the hearing officer or that officer's authorized representative.

(d) "Or other basis," within the meaning of K.S.A. 44-313(c), shall include all agreed compensation for services for which the conditions required for entitlement, eligibility, accrual or earning have been met by the employee. Such compensation may include, but is not limited to, profit sharing, fringe benefits, or compensation due as a result of services performed under an employment contract that has a wage rate required or implied by state or federal law. Conditions subsequent to such entitlement, eligibility, accrual or earning resulting in a forfeiture or loss of such earned wage shall be ineffective and unenforceable.

(e) "Allowed or permitted to work", within

the meaning of K.S.A. 44-313(b), shall not include an independent contractor, as defined by rules, regulations, and interpretations of the United States secretary of labor for the purposes of the fair labor standards act. (Authorized by K.S.A. 44-325; implementing K.S.A. 44-313 to 44-315, 44-316 to 44-321, 44-322, 44-322a, 44-323, 44-324, 44-325, 44-326; effective, E-73-23, July 7, 1973; amended, E-73-29, Sept. 28, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983.)

49-20-2 Revoked. (Authorized by K.S.A. 44-319, 44-321,, K.S.A. 1977 Supp. 44-313, 44-325; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; revoked, E-78-38, Dec. 29, 1977; revoked May 1, 1978.)

49-21-1 Filing of complaints.

- (a) Any complainant may file a claim, stating the details of the alleged nonpayment of earned wages, on official forms of the division of labor-management relations and employment standards. Any claim or claims filed by an attorney on behalf of the employee or employees shall constitute a proper filing.
- (b) An assignment of the complainant's claim and an agreement to settle the claim with the employer shall be accepted from the complainant. That assignment shall take effect only after the claim is determined to be valid and after an amount owed, including damages if applicable, has been determined.
- (c) There shall be no limit on the amount of claim in trust that may be accepted by the secretary of human resources.
- (d) A fee for each claim in trust assigned to the Kansas department of human resources shall be collected by the secretary or the secretary's designee for enforcement of the claim. The fee shall be charged on the basis of the amount of wages found due and owing

the employee, exclusive of penalties and interest, as follows:

	Fee
Amount of claims for wages	
\$200.00 or less	\$1.00
More than \$200.00, but less than or equal to \$500.00	\$2.00
More than \$500.00, but less than or equal to \$1,000.00	\$5.00
More than \$1,000.00	\$10.00

(Authorized by K.S.A. 44-325; implementing K.S.A. 44-324; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1987.)

49-21-2 Processing claims.

- (a) Service of claim. A copy of the claim shall be mailed to the employer by United States mail.
- (b) Investigation.
 - (1) The investigator shall determine that each claim is within jurisdiction of the Kansas wage payment statutes to the best extent possible prior to service of the claim upon the employer.
 - (2) The notice of claim shall contain citation of the statute alleged to have been violated with a brief description of the nature of the violation.
 - (3) The employer shall be notified of a specified date on which a response is required, not to exceed 20 days. Extensions of the response period may be extended for good and sufficient reasons at the discretion of the secretary or the secretary's authorized representative.
 - (4) The employer shall respond on forms provided by the division of labor-management relations and employment standards within the time specified in the notice of claim or within

10 days of receipt of the claim, whichever is longer. Any response which is incomplete and that does not answer the allegations of the claim shall not be considered to have satisfied the response requirement.

(5) Failure on the part of the employer to respond to a claim shall be considered as establishing a dispute and a hearing may be set without further investigation. The investigator in all claims shall have the full authority and power of the secretary as provided in K.S.A. 44-322.

(6) When the evidence shows there is probable cause to believe that a violation has occurred, the investigator shall attempt to obtain payment or settlement through conciliation of the parties to the dispute. Determination of an alleged violation shall be based upon:

(A) The lawful provisions of the employment agreement or contract between the employer and employee;

(B) evidence of work performed; and

(C) proof of payment for work performed under the agreement or contract. Any agreement by the parties or any requirement by the employer to contravene, set aside or waive any provision or any right created under the act shall be in violation of the act and equivalent to nonpayment of earned wages. Any provision contained in the employment agreement or contract that violates any provision or right created by this act shall not be enforceable, regardless of whether the parties have mutually assented to the provision. Any conditional wage payment requiring a release from further claim for balances alleged to be owed by the employer shall be a violation of K.S.A. 44-321 and therefor null and void unless that release is part of a binding settlement agreement as described in the act and defined herein.

(7) When evidence fails to support the alleged claim, the investigator, after giving

30 days notice to the claimant of the need for further evidence, may dismiss such claim as unmeritorious if such evidence is not submitted.

(8) In claims where a dispute has been determined to exist and payment or settlement is not obtained, the investigator shall prepare the case for hearing.

(Authorized by K.S.A. 44-325; implementing K.S.A. 44-321, 44-322, 44-322a, 44-324; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983.)

49-21-3 Hearings. (a) Authority of the hearing officer.

(1) The hearing officer shall be appointed by the secretary and shall have the power and authority, in conducting hearings in the name of the secretary, as provided in K.S.A. 44-322:

(A) To administer oaths and examine witnesses under oath;

(B) to issue compulsory process to compel the attendance of witnesses or the production of papers, books, accounts, records, payrolls, documents, or other exhibits relating to claims for unpaid wages; and

(C) to receive depositions and affidavits in the process of the hearing.

(2) The hearing officer shall conduct the hearing, rule on the admissibility of evidence and the examination of witnesses, and determine the extent to which the rules of evidence will apply.

(3) The hearing officer shall weigh the evidence presented, make findings of fact and conclusions of law, and issue orders based on those findings and conclusions. The hearing officer shall explain the decision in memorandum form and the memorandum shall accompany the order.

(4) The hearing officer may require good and sufficient reason before granting any continuance or postponement of any hearing for which proper service has been made. The hearing officer may refuse any such request when, in the hearing officer's judgment, the request:

(A) Would cause hardship or undue delay on the adverse party; or

(B) would not allow time for reasonable notice to each party and witness.

(b) Notice of hearing.

(1) Each party to the dispute shall be given not less than 10 days written notice of the time and place of the hearing by personal service or by first class mail. The notice shall contain a brief description of the alleged violations to be determined and shall state that each party may be represented by counsel, may call witnesses on its behalf, may cross-examine adverse witnesses, and may introduce evidence in support of its position.

(2) Subpoenas issued to require the attendance of witnesses or the production of evidence shall be served personally. Either party may request the use of a subpoena to require the production of evidence or the appearance of a witness by making the request no later than five days before the hearing date. Each request shall be specific so as to properly identify the evidence or person to be subpoenaed. Failure to obtain service of any such subpoena shall not be cause for a continuance or postponement of any hearing if improper service is made by the parties to the dispute, or if the requesting party has failed to provide accurate or complete information so as to allow such service or if the request does not allow sufficient time to obtain proper service. Final determination of the merits of any such request shall rest with the hearing officer.

(c) Hearing procedures.

(1) The burden of proof that services were performed within an established employment

agreement for which payment has not been made shall rest with the claimant. The burden shall be satisfied by testimony or other evidence. Once the claimant has established that an employment agreement existed and that services were performed, the burden of proof to establish payment for those services shall rest with the respondent.

(2) Strict rules of evidence shall not apply and the hearing officer may rule on questions of evidence. All evidence shall be relevant and material to the dispute, and the hearing officer shall determine when a party exceeds the bounds of relevancy. In such a case, the hearing officer may request that the evidence be made relevant to the dispute.

(3) A transcript of the hearing shall be made and maintained by a certified shorthand reporter, or the hearing officer shall make a record by means of a tape recording, until the record is duly transcribed and certified to the court as required. Any party desiring a copy of the transcript may make a request to the agency, and upon payment of a reasonable fee as established by the secretary, a transcript shall be furnished to the party by the department of human resources. Any party to the hearing wishing to make a separate record may do so at the party's own expense, if the party furnishes a copy to the secretary of human resources and to the adverse party as soon as it is available from the person making such a record.

(4) Either party to the dispute may be represented by counsel and may call any witnesses or cross-examine any witness.

(5) The record on appeal shall consist of the complaint, any response thereto by the employer, any reply by the claimant to the employer's response, the transcript of the proceedings before the administrative tribunal, any exhibits introduced at the hearing, and the order entered by the hearing officer. That portion of the entire record which

is to be filed with the clerk of the district court shall be determined and prepared for filing in accordance with these regulations, but the district court may order any or all additional parts of the entire record to be filed.

(6) The cost of reproducing the record for filing with the district court shall be borne by the appellant. Upon ascertaining the cost of the duplication and the payment thereof in advance by the party making the request, the agency shall effect such duplication and transmit the record to the clerk of the district court for filing.

(d) Findings of fact, conclusions of law, and order.

(1) The findings of fact shall set forth all facts:

(A) That are supported by the evidence;

(B) which are relevant to the issues of the claim; and

(C) that are necessary to support conclusions of law.

(2) The order shall be issued by the hearing officer within 45 days of the hearing and shall include, if required by the facts, any damages assessed because of respondent's willful violation. The order shall contain a certificate of service and shall be served upon each party to the dispute either personally or by first class mail. The order shall contain a statement that, unless the order is satisfied, or an appeal is taken to the district court in accordance with K.S.A. 60-2101 within 30 days after entry of the decision, the case will be:

(A) Referred to the secretary of human resources or the secretary's authorized representative for enforcement; or

(B) reassigned to the claimant for enforcement through judicial proceedings.

(Authorized by K.S.A. 44-325; implementing K.S.A. 1983 Supp. 44-322a, K.S.A. 44-324, 44-327; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978;

amended May 1, 1983; amended May 1, 1984.)

49-21-4 Reciprocal enforcement agreement with other states. The secretary of human resources may enter into agreement with other states to collect wages from out-of-state employers, and to perform reciprocal services in the state of Kansas for those other states, as follows:

(a) To the extent allowed in K.S.A. 44-322, the secretary may agree to assist other states in the investigation of claims filed in the foreign state claiming unpaid wages from a Kansas employer.

(b) The secretary may request other states that are party to the reciprocal agreement to assist in the investigation of Kansas claims filed by employees performing services in Kansas when the employer is located in a foreign state.

(c) The secretary may agree:

(1) to enforce judgments for wage payment in Kansas for other states when the employer is a Kansas employer; and

(2) to request other states who are party to the agreement to execute Kansas judgments for wages in those foreign states when the services were performed in Kansas and the employer is located in a foreign state.

(d) The secretary may agree to enforce claims of an employee in a foreign state:

(1) when the employee is represented by a private attorney; and

(2) when the attorney has made application through the office having jurisdiction in that state over the wage payment laws to certify the claim to the secretary of human resources for enforcement.

(e) Determination of claims shall be made by the state having jurisdiction according to the lawful requirements of that state.

(Authorized by K.S.A. 44-325; implementing K.S.A. 44-327; effective May 1, 1984.)